

MAINE WORKERS' COMPENSATION BOARD COMPLIANCE AUDIT REPORT

March 27, 2001

The Yasuda Fire & Marine Insurance Company of America
Two World Financial Center, 43rd Floor
225 Liberty Street
New York, NY 10281-1058

Claims Covered by Audit: 1999 Dates of Injury

Companies Covered by Audit:

Yasuda Fire & Marine Insurance Company NCCI # 19321

Examination by:

Michael Nadeau, Auditor Manager
Steven Minkowsky, D.D.B.A.
Marlene Swift, Auditor

Reviewed and Approved by:

Steven Minkowsky, D.D.B.A.

The results of the audit and the procedures followed have been explained to:

Name:	Title:	Date:
Tom Yodice	Vice President	Various
Craig Hess	Workers' Compensation Manager	Various

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SUMMARY

The Audit Division of the Maine Workers' Compensation Board examined a sample of 25 claim files for the period under examination (1999) to determine compliance with statutory and regulatory requirements in the following areas:

- Form filing
- Timeliness of indemnity payments
- Accuracy of indemnity payments

Of the 25 claim files audited, there were 5 "lost time" claims and 20 "medical only" claims.

Our audit revealed:

- Form filing compliance ranged from 0 to 100%:
 - ◆ The highest compliance was found in filing WCB-9, Notice of Controversy forms.
 - ◆ Total noncompliance was found in filing WCB-11, Statement of Compensation forms. Of the two forms that were required, but not filed:
 1. One was promptly filed upon notification by this division.
 2. One was requested by this division, but had not been received as of the date of the drafting of this report.
 - ◆ Two of the five "lost time" claims audited had not been filed at the time of audit:
 1. One unreported claim involved less than seven days of lost time.

Upon notice from this division, Yasuda submitted an incorrectly formatted WCB-1, Employer's First Report of Occupational Injury or Disease form. (It appears that the employer has designed their own version of the form, and in doing so they have changed and/or omitted several fields on the form.)

This division has made two requests for correction (by telephone). As of the date of the drafting of this report, no correction has been received.

SUMMARY

2. Indemnity was paid on the second unreported claim.

Upon notice from this division, Yasuda submitted an outdated WCB-1, Employer's First Report of Occupational Injury or Disease form (version WCC, 11-83). They also advised this division that they would file the WCB-3, WCB-4 and WCB-11 forms for this claim upon their receipt of wage information.

This division has made two requests for correction of the WCB-1 form (by telephone). As of the date of the drafting of this report, no correction has been received and no other forms have been received.

- Neither of the two initial indemnity payments were made timely.
- One payment was found to be in violation of §205(3).
- Two errors were identified in the methods used to determine the average weekly wage (AWW) for one of the two compensable claims:
 - ◆ Wages from the employee's week of hire and wages from another employee were used to calculate the AWW. Both factors resulted in a lower AWW. The additional wages were unnecessary because the injured employee's pre-injury wages were sufficient to determine the AWW.
 - ◆ Upon notice from this division, Yasuda promptly made the appropriate corrections and paid the employee the balance due (\$10.20).
- No errors were identified in the methods used to calculate benefits.

Based on the preceding findings, it appears that Yasuda Fire & Marine has a limited understanding of the Maine Workers' Compensation Law, Rules, form-filing requirements, etc. We recommend that they seek training in these areas.

PENALTIES

A. Section 205(3), M.R.S.A. Penalties (payable to injured employees)

“When there is not an ongoing dispute, if weekly compensation benefits or accrued weekly benefits are not paid within 30 days after becoming due and payable, \$50 per day must be added and paid to the worker for each day over 30 days in which the benefits are not paid. Not more than \$1,500 in total may be added pursuant to this subsection. For purposes of ratemaking, daily charges paid under this subsection do not constitute elements of loss.”

Penalties pursuant to 39-A M.R.S.A. Sec. 205(3) are paid directly to the injured employee. The penalty below is being sought. If you disagree, you have the right to a hearing before the Abuse Investigation Unit. Please provide proof of payment for all undisputed penalties.

CLAIM	PENALTY JUSTIFICATION	PENALTY AMOUNT
Linda Wentworth vs. Mikasa Factory Store Date of Injury: 11-19-99 Yasuda's File # N60148 WCB File #: Claim not reported to WCB.	No NOC was filed, and the first indemnity payment was made 112 days after compensation became due and payable.	\$ 1,500.00
Total Penalties to Injured Employees		\$1,500.00

PENALTIES

B. Penalties Allowed by Law (payable to the Workers' Compensation Board)

◆ 39-A M.R.S.A. Sec. 359(2)

"In addition to any other penalty assessment permitted under this Act, the board may assess civil penalties not to exceed \$10,000 upon finding, after hearing, that an employer, insurer or 3rd-party administrator for an employer has engaged in a pattern of questionable claims-handling techniques or repeated unreasonably contested claims. The board shall certify its findings to the Superintendent of Insurance, who shall take appropriate action so as to bring any such practices to a halt. This certification by the board is exempt from the provisions of the Maine Administrative Procedure Act."

◆ 39-A M.R.S.A. Sec. 360(1)(A)

"The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete any report or form required by this Act or rules adopted under this Act;"

Seven (7) forms have not been filed (\$700.00).

This number reflects only those forms requested by the Audit Division, which have not been properly filed as of the date of the drafting of this report.

◆ 39-A M.R.S.A. Sec. 360(1)(B)

"The board may assess a civil penalty not to exceed \$100 for each violation on any person: Who fails to file or complete such a report or form within the time limits specified in this Act or rules adopted under this Act."

One (1) forms was filed late (\$100.00).

This number reflects only that form submitted subsequent to the audit and in response to a request by the Audit Division. It does not include any forms that were filed late prior to audit.

◆ 39-A M.R.S.A. Sec. 360(2)

"The board may assess, after hearing, a civil penalty in an amount not to exceed \$1,000 for an individual and \$10,000 for a corporation, partnership or other legal entity for any willful violation of this Act, fraud or intentional misrepresentation. The board may also require that person to repay any compensation received through a violation of this act, fraud or intentional misrepresentation or to pay any compensation withheld through a violation of this Act, fraud or misrepresentation, with interest at the rate of 10% per year.

INDEMNITY BENEFITS

A. Prompt Initial Payment of Benefits

			1999	
			Number	Percent
Check Mailed Within:				
0-14	Days	Compliant	0	0%
15-28	Days		1	50%
29+	Days		1	50%
Total Due			2	100%

B. Prompt Subsequent Payment of Benefits

No subsequent payments were made on either of the two compensable claims that were audited.

C. Accuracy of Average Weekly Wage

			1999	
			Number	Percent
Calculated:				
Correct		Compliant	0	0%
Incorrect			1	50%
Unknown ¹			1	50%
Total			2	100%

D. Accuracy of Weekly Benefit Rate

			1999	
			Number	Percent
Calculated:				
Correct		Compliant	0	0%
Incorrect			1	50%
Unknown			1	50%
Total			2	100%

¹ The Category "Unknown" is a result of insufficient record keeping by the insurance company.

FORM FILING

A. First Report (WCB-1)

		1999	
		Number	Percent
Received at the Board:			
Filed	Compliant	3	60%
Not Filed		2	40%
Total		5	100%

B. Wage Statement (WCB-2)

		1999	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	50%
Not Filed		1	50%
Total		2	100%

C. Schedule of Dependent(s) and Filing Status Statement (WCB-2A)

		1999	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	50%
Not Filed		1	50%
Total		2	100%

D. Memorandum of Payment (WCB-3)

		1999	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	50%
Not Filed		1	50%
Total		2	100%

FORM FILING (Continued)

E. Discontinuance or Modification (WCB-4)

		1999	
		Number	Percent
Received at the Board:			
Filed	Compliant	1	50%
Not Filed		1	50%
Total		2	100%

F. Notice of Controversy (WCB-9)

		1999	
		Number	Percent
Received at the Board:			
Filed	Compliant	2	100%
Total		2	100%

G. Statement of Compensation Paid (WCB-11)

		1999	
		Number	Percent
Received at the Board:			
Filed	Compliant	0	0%
Not Filed		2	100%
Total		2	100%